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In re Application of
Sakai, et al.
Serial No.: 10/573,191
PCT No.: PCT/JP2004/015828
Int. Filing Date: 26 October 2004
Priority Date: 07 November 2003
Attorney's Docket No.: 8002P0001
For: PHARMACEUTICAL COMPOSITION
CONTAINING PROSTAGLANDIN

DECISION ON
RENEWED PETITION
UNDER 37 CFR 1.181

This decision is responsive to the "RENEWED PETITION UNDER 37 C.F.R. §1.181" filed 19 November 2007.

BACKGROUND

On 26 October 2004, applicants filed international application PCT/JP2004/015828 which claimed priority of an earlier United States application filed 07 November 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 19 May 2005. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 07 May 2006.

On 21 March 2006, applicants filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by *inter alia*, a copy of the application, a translation of the international application, a preliminary amendment, the basic national fee, the search fee and the examination fee. These papers were assigned U.S. Serial No. 10/573,191.

On 29 November 2006, the United States Patent and Trademark Office in its capacity as an Elected Office mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and the \$130 surcharge for providing the oath/declaration after 30 months from the earliest claimed priority date. The notification set a two-month time period in which to respond.

On 11 September 2007, applicant filed a petition under 37 CFR 1.181 requesting that the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) be given a new mail date, since applicant did not receive the notification mailed 29 November 2006.

On 06 November 2007, a petition decision was mailed to applicant indicating that the petition was dismissed for failure to provide the required docket record.

On 19 November 2007, applicant filed the current petition.

DISCUSSION

Applicant is alleging that the office action, i.e., the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905), was never received. According to MPEP 711.03(c), in order for applicant to establish nonreceipt of an Office communication, applicant must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

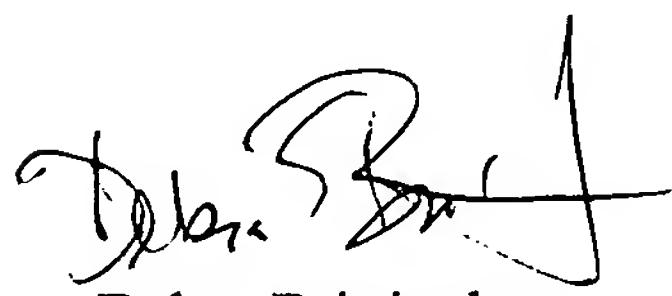
Applicants have provided the required statement and a copy of the docket records where the nonreceived Office communication would have been entered had it been received. Therefore, the petition to withdraw the holding of abandonment is granted.

CONCLUSION

The petition to withdraw the holding of abandonment under 37 CFR 1.181 is **GRANTED**.

The application has an International Filing Date under 35 U.S.C. 363 of **26 October 2004** and a date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) of **11 September 2007**.

This application is being forwarded to the national stage office for processing in accordance with this decision.



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